82-6425

No. _____

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1982

RONALD RAYMOND WOOMER,

PETITIONER,

v.

STATE OF SOUTH CAROLINA,

RESPONDENT.

PETITION FOR WRIT OF CERTIORARI TO

THE SUPREME COURT OF SOUTH CAROLINA

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QUESTIONS PRESENTED

I. Whether use in a captial sentencing proceeding of a state psychiatrist's opinion that petitioner would commit future acts of violence violated the Fifth, Sixth, and Fourteenth Amendments, where, although petitioner consented to court-ordered competency and sanity determinations, he was not informed either that he had a right to counsel, that the scope of the examination would also encompass future dangerousness, or that his responses could be used to sentence him to death?

II. Whether use against petitioner in a capital sentencing proceeding of inherently unreliable psychiatric predictions of long-term dangerousness violated the Eighth and Fourteenth Amendments?

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No. _____

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PETITIONER,

vs.

STATE OF SOUTH CAROLINA,

RESPONDENT.

PETITION FOR WRIT OF CERTIORARI TO
THE SUPREME COURT OF SOUTH CAROLINA

Petitioner Ronald Raymond Woomer prays that a Writ of Certiorari issue to review the judgment of the Supreme Court of South Carolina in this case.

CITATION TO OPINION BELOW

The opinion of the Supreme Court of South Carolina is reported in State v. Woomer, ___ S.C. ___, 299 S.E.2d 317 (1982), and is attached hereto as Appendix A to this Petition.

JURISDICTION

The Supreme Court of South Carolina filed its opinion and thus entered its judgment on December 20, 1982. In an order dated January 18, 1983 (attached as Appendix B), that court denied petition for rehearing. And on February 9, 1983, it granted a sixty (60) day stay of execution (order granting stay attached as Appendix C) pending filing of a Petition for Writ of Certiorari in this Court. Petitioner invokes this Court's jurisdiction pursuant to 28 U.S.C. §1257(3) since he has asserted below and herein deprivations of rights secured by the Constitution of the United States.

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

This case involves the Fifth Amendment to the Constitution of the United States, which provides in relevant part:

> [N]or shall any person... be compelled in any criminal case to be a witness against himself....

the Sixth Amendment to the Constitution of the United States, which provides in relevant part:

> In all criminal prosecutions, the accused shall enjoy the right... to have the assistance of counsel for his defense.

the Eighth Amendment to the Constitution of the United States, which provides in relevant part:

> Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

the Fourteenth Amendment to the Constitution of the United States, which provides in relevant part:

> [N]or shall any State deprive any person of life, liberty, or property, without due process of law....

and S.C. Code Ann. §44-23-410 (1976), which provides in relevant part:

> Whenever a judge of the circuit court, county court, or family court has reason to believe that a person on trial before him, charged with the commission of a criminal offense, is not fit to stand trial because such person lacks the capacity to understand the proceedings against him or to assist in his own defense as a result of a lack of mental capacity, the judge shall:
>
> * * *
>
> (2)Order such person committed for examination and observation to an appropriate facility for a period not to exceed fifteen days. If at the end of fifteen days the examiners have been unable to determine whether the person is fit to stand trial, the superintendent of the facility shall request in writing an additional period for observation not to exceed fifteen days. If such person or his counsel so requests, the person may be examined additionally by a designated examiner of his choice. The report of such examination shall be admissible as evidence in subsequent hearings pursuant to §44-23-430. Provided, that the court may prescribe the time and conditions under which such independent examination is conducted.

STATEMENT OF THE CASE

At the conclusion of the guilt-innocence phase of a bifurcated proceeding in July 1979, an Horry County (South Carolina) jury found petitioner Ronald Woomer guilty of first degree criminal sexual conduct,[1] kidnapping (two counts), assault and battery with intent to kill, and murder.[2] Following the penalty phase petitioner Woomer received a death sentence. On appeal the Supreme Court of South Carolina affirmed the convictions but reversed the sentence and remanded for a new punishment proceeding due to an improper closing argument by the prosecutor and inadequate jury instructions by the judge. State v. Woomer, 276 S.C. 258, 277 S.E.2d 696, 701-702 (1981).

At a second sentencing proceeding in July of 1981, petitioner again received a sentence of death. This time the State Supreme Court affirmed the sentence. State v. Woomer, ___ S.C. ___, 299 S.E.2d 317 (1982).

During the 1981 trial the state introduced in its case-in-chief, over defense objection, a psychiatrist, Dr. Mario Galvarino, to voice his opinion that Mr. Woomer, if given the opportunity, would commit future acts of violence (Tr. 1574).[3]

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[1] The various forms of sexual battery are codified into a comprehensive scheme, S.C. Code Ann. §§16-3-651 (Cum. Supp. 1982), that eliminates the prior distinctions (rape, sodomy, etc.) and labels all sexual batteries as criminal sexual conducts of varying degrees.

[2] The South Carolina Supreme Court has twice explained the details of these crimes in State v. Woomer, 276 S.C. 258, 277 S.E.2d 696, 698 (1981) and State v. Woomer, ___ S.C. ___, 299 S.E.2d 317 (1982). It describes the offenses as starting with a Georgetown County convenience store robbery and abduction of two women there by petitioner and Gene Skaar, and ending with the women being sexually assaulted and shot in a secluded area of Horry County. One woman lived; one died. Prior to petitioner's arrest at a Myrtle Beach motel, Skaar committed suicide.

[3] On this topic the doctor testified as follows:

> Based on our studies and observations, it is my opinion that Mr. Woomer, first of all, is not mentally ill. He's not insane. It is my opinion that Mr. Woomer does have an antisocial personality trait. That means that he will not conform to authority. He will not conform to the Law, furthermore, he will, in all likelihood, if the situation will arise, repeat, over and over, the crimes that he has perpetrated

(Footnote 3/ continued on the following page)

Dr. Galvarino had examined Ronald Woomer during two periods of court-ordered confinement at the South Carolina State Hospital in Columbia. Mr. Woomer was arrested for murder on February 22 or 23, 1979 (Tr. 1357-1358). At the request of defense counsel, appointed on February 24, 1979, and with the consent of the local solicitor (prosecutor), a state circuit judge, on February 27, 1979, ordered petitioner's temporary commitment to a state mental health facility pursuant to S.C. Code Ann. §44-23-410 (1976) for a determination of his competency to stand trial and to assist in his defense. (Tr. 1426-1427; see Appendix D). This confinement lasted until March 13, 1979 (Tr. 1555). The second court-ordered evaluation — this time at the solicitor's request, but again with defense counsel's consent — lasted from March 29 to April 5, 1979, and was for a determination whether petitioner had been criminally responsible for his acts (Tr. 1449-1450; see Appendix E).

Dr. Galvarino testified that during the first evaluation period he instructed Mr. Woomer as follows:

> I'm the chief of the service. You are here pursuant to court order, and I show to them the court order, which requests from me to establish, in his case was, compentency to stand trial, and if he was able to assist counsel in his defense, and if he did have any type of mental illnesses. At the time I told him, whatever information you give to me is not going to be confidential and can be held against you, therefore, you are now to tell me whatever you want to. [Tr. 1428-1429].

and during the second period he gave a similar admonition:

> You know who I am. I am here for -- to evaluate you for the purpose of establishing your criminal responsibility at the time of the alleged crime,

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3/ cont'd.

> in the past. This type of individual, in my opinion, they thrive on people's pain, and they will do their utmost in order to obtain their satisfaction, which, in this case, only can be obtained through people's suffering. I do not perceive any type of treatment for this type of individual. [Tr. 1574, lines 11-12, emphasis added].

The admissibility of this testimony was not an issue addressed in petitioner's first state appeal, decided in State v. Woomer, 276 S.C. 258, 277 S.E.2d 696 (1981), the month prior to this Court's decision in Estelle v. Smith, 451 U.S. 454 (1981).

> and if he knew right from wrong, moral right from moral wrong, at the time of the alleged crime. You again, should know that anything that you say can be held against you. I would have to document it. Anything that happens between us is not confidential. You can answer any question I ask you, if you so wish. [Tr. 1430].

The doctor admitted that he had not instructed petitioner he could consult with an attorney if he wished (Tr. 1437). He did not warn Ronald Woomer that his responses could be used to sentence him to death (Tr. p. 1437). And he never explained that the evaluation would go beyond those subjects stated in the commitment order — competency to stand trial and criminal responsibility. In fact, he read the orders to petitioner before questioning him, thus implying the inquiry was limited to the stated purposes of the orders (Tr. 1436-1437).

Two other hospital employees — Melvin Davis, a social worker, and T.V. Smith, a forensic psychologist — testified briefly in camera before the trial judge (Tr. 1466-1478). Each recalled having explained to Ronald Woomer prior to questioning him that he did not have to respond and that, if he did, his responses could be used against him in a trial (Tr. 1467-1468, 1474-1476). Neither indicated having told Woomer that he had a right to consult with his attorney; that his responses could be used to sentence him to death; or that the evaluation would extend beyond determination of competency and criminal responsibility (Tr. 1466-1478). Neither testified before the jury, as did Dr. Galvarino, about petitioner's mental condition.

Petitioner Woomer presented no insanity defense. And offered no psychiatrists or psychologists as witnesses.

During its deliberation the jury once returned to inquire about the possibility of parole accompanying a life sentence (Tr. 1950). The judge instructed that parole possibility was not a proper consideration for the jury (Tr. 1957-1959). Ultimately, the jury recommended a sentence of death (Tr. 1961). Since the jury's recommendation was binding on the trial court, State v. Shaw, 273 S.C. 194, 255 S.E.2d 799, 802 (1979), it then sentenced Ronald Woomer to be executed (Tr. 1969-1970).

HOW THE FEDERAL QUESTIONS WERE RAISED AND DECIDED BELOW

At trial defense counsel objected to Dr. Galvarino's predictions of dangerousness on several grounds. Among his reasons was his assertion that the responses which formed the bases of the prediction had been acquired in violation of the Fifth Amendment privilege against self-incrimination and the Sixth Amendment right to counsel (Tr. 1498-1503). In support of this argument trial counsel relied on this Court's decision in Estelle v. Smith, 451 U.S. 454 (1981) (Tr. 1502). Petitioner's trial attorney also maintained that such predictive testimony was too unreliable for a decision to impose death to rest on it, even in part, and still comport with guarantees of the Eighth Amendment (Tr. 1511-1513, 1536-1537). In support of this contention counsel submitted a copy of a report prepared in 1974 by the American Psychiatric Association Task Force on Clinical Aspects of Violent Individuals which criticized such predictions as being of fundamentally low reliability (Tr. 1536-1537; Trial Court's Exhibit 2-9 at Tr. 2051-2099).

On appeal to the Supreme Court of South Carolina petitioner argued that the use of Dr. Galvarino's predictive testimony violated the Fifth and Sixth Amendments, made applicable to the states by the Fourteenth Amendment (Brief of Appellant at 3-8; Reply Brief of Appellant at 1-8). He also asserted that the testimony was of such low reliability that it was both inadmissible under state evidentiary principles and an impermissibly arbitrary factor affecting the imposition of the death sentence, thus contravening the Eighth Amendment and the relevant provision in South Carolina's death penalty statues, S.C. Code Ann. §16-3-25(C)(1) (Cum. Supp. 1982) (Brief of Appellant at 9-13).

In its brief submitted to the South Carolina Supreme Court, respondent agreed that the Fifth, Sixth, and Fourteenth Amendments, as explicated in Estelle v. Smith, 451 U.S. 454 (1981), applied to custodial questioning by state hospital employees during petitioner's court-ordered stays there (Brief of

Respondent at 4-5, 7). But, respondent argued, due to the warning actually given and defense counsel's consenting to the examinations, no violations of the rights to silence and counsel had occurred (Brief of Respondent at 5-7).

Relying on State v. Shaw, 273 S.C. 194, 255 S.E.2d 799 (1979), cert. denied 444 U.S. 957,[4/] respondent contended "that the characteristics of the defendant are relevant and necessary" in a capital sentencing proceeding (Brief of Respondent at 7). And citing Estelle v. Smith, 451 U.S. 454 (1981), it asserted that this Court "ha[d] in no way disapproved" of use of psychiatrists' predictions of dangerousness in capital sentencing proceedings (Brief of Respondent at 7).

In its decision in this case, the Supreme Court of South Carolina — while noting, but not expressly attaching any special significance, that defense counsel consented to determinations of criminal responsibility and competency to stand trial — held that the warnings given "fully complie[d] with" petitioner's Fifth and Sixth Amendment rights, as explained in Estelle v. Smith, 451 U.S. 454 (1981), and Battie v. Estelle, 655 F.2d 692 (5th Cir. 1981). State v. Woomer, 299 S.E.2d at 319. Responding to petitioner's argument that, irrespective of the Fifth and Sixth Amendment questions, the evidence was so unreliable that it injected an impermissibly arbitrary factor into the sentencing proceeding, the court held: "The trial court exercised sound discretion on this matter." Id., 299 S.E.2d at

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[4/] In its Shaw decision — the first appeal decided under South Carolina's present capital sentencing scheme and the one in which that procedure was held to be constitutional — the court held that the State was not limited to presenting evidence relevant to statutory mitigating and aggravating circumstances. It could, the court said, also present evidence relevant to "the circumstances of the crime and the characteristics of the individual defendant." Id., 255 S.E.2d at 806. The Shaw case involved photographs relevant to the circumstances of the crime, not to the defendant's individual characteristics.

Curiously, in State v. Koon, __S.C. __, 298 S.E.2d 796 (1982), a capital case decided the same day as petitioner's appeal, the state court held that a psychiatrist's testimony, offered by the defense to show Koon's future adaptability to prison, "was properly excluded as irrelevant" since the jury's concern was with "the characteristics of the individual defendant as they bear logical relevance to the crime," not with future adaptability. Id., 298 S.E.2d at 774 (emphasis added).

320.[5]

REASONS FOR GRANTING THE WRIT

I. THE DECISION BELOW CONFLICTS WITH THE RATIONALE OF THIS COURT'S DECISION IN ESTELLE V. SMITH. THE PRESENT CASE IS APPROPRIATE BECAUSE IT INVOLVES CONSTITUTIONAL QUESTIONS LEFT OPEN IN SMITH AND BECAUSE IT INVOLVES A PETITIONER UNDER SENTENCE OF DEATH.

A. THIS CASE INVOLVES QUESTIONS LEFT OPEN IN ESTELLE V. SMITH.

1. Do the Fifth Amendment principles announced in Smith require that an individual be informed of his right to counsel in addition to his privilege against self-incrimination?

In Estelle v. Smith, 451 U.S. 454 (1981), a majority of this Court held that a court-appointed psychiatrist cannot, as a state's witness in a capital sentencing proceeding, offer his opinion of a defendant's potential for future dangerousness, if that opinion is based on in-custody interviews conducted without the safeguards announced in Miranda v. Arizona, 384 U.S. 436 (1966). But throughout his majority opinion Chief Justice Burger repeatedly referred to the portion of the so-called Miranda warning that informs a defendant of his right to silence and the use that can be made of his responses, but not the portion that protects the right to confer with an attorney — the part that plainly was not given to petitioner. In fact, in a footnote the majority stated it was "not concerned" in Smith with the limited right to counsel protection of the Fifth Amendment since there clearly had been a Sixth Amendment right to counsel in effect. Estelle v. Smith, 451 U.S. at 470 n.14. As a result, a lower court can interpret Smith to require that the full customary Miranda warning be given. E.g., Harris v. Pulley, 692 F.2d 1189, 1200-1201 (9th Cir. 1982) (requiring "standard Miranda warning"). The language of the lower court

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[5] Since the court did not address petitioner's Eighth Amendment claim, it was repeated in a petition for rehearing (attached as Appendix F). The petition was denied without discussion. See Appendix B.

opinion (requiring "the same warnings Miranda requires a police officer to give," State v. Woomer, 299 S.E.2d at 319) indicates that view, but the court's decision has approved a partial Miranda warning.

Even though the Smith decision does not expressly grant a defendant the right to have his attorney present during a psychiatric examination, Estelle v. Smith, 451 U.S. at 470 n.14, there should be such a right. An accused is probably more in need of counsel's assistance when responding to the subtle, probing questions of an amiable psychiatrist than he is when facing the most persistent of police interrogators. And seldom will anything a police officer learns by his methods match the devastating and chilling impact in a capital sentencing proceeding of a psychiatrist, with his appearance of expertise, who testifies that a defendant cannot be rehabilitated and will probably kill again. But regardless of whether a person has a right protected by the Fifth Amendment to have counsel present when questioned by the State's psychiatrists, he should have the right to consult with counsel before such questioning and, if he feels it is necessary, he should be able to terminate an examination and consult with an attorney. That right should be protected by the Fifth Amendment, and an accused should be informed of that right, if the principles announced in Miranda are to have the validity in the psychiatric examination setting that Smith indicates they do. Estelle v. Smith, 451 U.S. at 466-469.

2. Before responses acquired during a court-order psychiatric examination can be used to sentence a defendant to death, does the Fifth Amendment require that the accused be informed of that use of his responses for there to be an effective waiver of the privilege against self-incrimination?

The majority opinion in Smith contained the following language:

> Because respondent did not voluntarily consent to the pretrial psychiatric examination after being informed of his right to remain silent and the possible use of

> his statements, the state could not rely on what he said to [the psychiatrist] to establish his future dangerousness.

Estelle v. Smith, 451 U.S. at 469 (emphasis added). Lower courts are in disagreement as to whether this language in Smith requires that a defendant be informed that his responses to a psychiatrist may be used against him in a capital proceeding. Compare Harris v. Pulley, 692 F.2d 1189, 1201 (9th Cir. 1982) with Fields v. State, 627 S.W.2d 714, 718 (Tex. Cr. App. 1982). That this question be resolved is essential.

When a police officer questions a suspect, the information he seeks and its potential uses are normally relatively easy to determine. Warning the suspect that his responses may be used against him in court is generally a sufficient safeguard to put him on his guard and to enable him to make an intelligent decision about waiving his right to silence. But a psychiatrist's questions will not so clearly alert a defendant of their purpose. The doctor will not likely ask a person, "Do you plan to kill people or to commit acts of violence in the future?" if that is the subject about which he hopes to acquire data. Many of his questions will be indirect, and his inferences will be somewhat subjective.

This makes additional protections necessary, if waiver of the privilege against self-incrimination is to be voluntary and intelligent. At least two factors support requiring such a warning about possible consequences of waiver of the right to silence in this context. One factor is the reality that the death penalty is unique and requires added safeguards. Cf., Beck v. Alabama, 447 U.S. 625 (1980). Another is the obvious connection noted above between a person's ability intelligently to waive his privilege against self-incrimination and the question of whether he is sufficiently aware of the adversary interests at stake if he does waive that right.

That the "death is different"[6/] rationale is a theoretical underpinning of Estelle v. Smith seems clear. In Smith the

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[6/] See Gardner v. Florida, 430 U.S. 349, 357 (1977).

state argued inter alia that Miranda warnings had not been required because the psychiatrist's testimony had been used only to determine punishment, not guilt. Id., 451 U.S. at 462. Rejecting that argument, this Court did not say that that Fifth Amendment protections involved would apply to any statement sought and used to enhance punishment. Rather, relying on earlier decisions in capital cases requiring strict procedural safeguards,[7] the Court's majority apparently based its rejection of the state's argument on the fact that the "ultimate penalty of death," not the usual sentencing decision, was the issue in Smith's penalty proceeding. Id., at 462. See Bullington v. Missouri, 451 U.S. 430 (1981).

An additional rationale of the Smith decision is that the defendant was not made adequately aware of the consequences of his incriminatory responses:

> During the psychiatric evaluation, respondent surely was "faced with a phase of the adversary system" and was "not in the presence of [a] perso[n] acting solely in his interest." Yet he was given no indication that the compulsory examination would be used to gather evidence necessary to decide whether, if convicted, he should be sentenced to death. He was not informed that, accordingly, he had a constitutional right not to answer the questions put to him.

Estelle v. Smith, 451 U.S. at 467 (emphasis added), quoting Miranda v. Arizona, 384 U.S. at 469. A better reading of Smith — one that would effectively facilitate its aim that a defendant not be the "deluded instrument of his own execution," 451 U.S. at 462 — would be to require a warning that sufficiently apprises a defendant of the interests at stake.

Regardless of whether the Fifth Amendment implications of Smith and Miranda require a warning in every case encompassing the possible consequences of waiving the right to silence, still the plain language of Smith indicates a concern that a defendant

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[7] Estelle v. Smith, 451 U.S. at 463, citing Green v. Georgia, 442 U.S. 95 (1979); Presnell v. Georgia, 439 U.S. 14 (1978); Gardner v. Florida, 430 U.S. 349 (1977) (plurality opinion).

be made aware through some source of the consequences of waiver of that privilege, if he is to waive it intelligently and voluntarily. Petitioner Woomer knew only that he was submitting to determinations of his capacity to stand trial and his criminal responsibility.

3. Does the fact that a defendant and his attorney consent to a psychiatric examination indicate either a waiver of Fifth Amendment protections or the absence of a deprivation of the right to counsel?

In Estelle v. Smith the trial court informally ordered a psychiatric examination without advance consent from either the defendant or his attorney. Id., at 458-459. Here petitioner Woomer and his attorney did consent to the examinations. A portion of the Smith majority opinion, if taken out of the context of the entire opinion, could be read as indicating this factor is significant:

> A criminal defendant, who neither initiates a psychiatric evaluation nor attempts to introduce any psychiatric evidence, may not be compelled to respond to a psychiatrist if his statements can be used against him at a capital sentencing proceeding. Because respondent did not voluntarily consent to the pretrial psychiatric examination after being informed of his right to remain silent and the possible use of his statements, the State could not rely on what he said to Dr. Grigson to establish his future dangerousness.

Id., at 468. The Court of Appeal for the Fifth Circuit has dealt with this precise issue in a fashion consistent with the aims of the Smith decision.

In Battie v. Estelle, 655 F.2d 692 (5th Cir. 1981), the relevant facts were comparable to those in Smith, except that the defense had (as in petitioner's case) requested determinations of competency and sanity. Responding to the state's contention that Battie, by requesting the examination, had waived his privilege against self-incrimination, the court stated that "[s]ubmitting to a psychiatric examination does not itself constitute a waiver of the [F]ifth [A]mendment's protection." Id., at 702. This seems correct.

As noted in Smith, a defendant has no per se right to refuse a court-ordered psychiatric examination. Estelle v. Smith, 451 U.S. at 465 ("Indeed, if the application of [a psychiatrist's] finding had been confined to serving that [competency determining] function, no Fifth Amendment issue would have arisen.") Consenting to questioning where no right exists to refuse surely could not be waiver. Moreover, consenting to determination of competency or sanity would not be an understanding consent to inquiries going beyond the extent of the consent, without prior warning of the expanded scope of the examination. "The fact that defense counsel initially requested an examination to determine the petitioner's competency and sanity does not render Miranda inapplicable." Battie v. Estelle, 655 F.2d at 703.

Similarly, consenting to the limited examinations does not waive the right to the guiding hand of counsel without knowledge the questioning will encompass future dangerousness. In petitioner Woomer's case, as in Smith:

> Defense counsel, however, were not notified in advance that the psychiatric examination would encompass the issue of their client's future dangerousness, and respondent was denied the assistance of his attorneys in making the significant decision of whether to submit to the examination and to what end the psychiatrist's findings could be employed.

Estelle v. Smith, 451 U.S. at 471.

II. IN A CAPITAL CASE THE USE OF PSYCHIATRIC TESTIMONY ON THE ISSUE OF FUTURE DANGEROUSNESS IS CONSTITUTIONALLY INVALID BECAUSE IT UNDERMINES THE RELIABILITY OF THE FACTFINDING PROCESS.

In Jurek v. Texas, 428 U.S. 262 (1976), this Court held that Texas's death penalty statute, which required the factfinder to determine a question of the defendant's future dangerousness, was not unconstitutional on its face. Later, in Estelle v. Smith, 421 U.S. 454 (1981), the Court in dicta, "[w]hile in no sense disapproving the use of psychiatric testimony on the issue of future dangerousness," id., at 473, noted:

> Indeed, some in the psychiatric community are of the view that clinical predictions as to whether a person would or would not commit violent acts in the future are "fundamentally of very low reliability" and that psychiatrists posess no special qualifications for making such forecasts. See Report of the American Psychiatric Association Task Force on Clinical Aspects of the Violent Individual 23-30, 33 (1974); A. Stone, Mental Health and Law: A System in Transition 27-36 (1975); Brief for American Psychiatric Association as Amicus Curiae 11-17.

Id., at 472. Since this issue will repeatedly occur, it is worth the Court's time to meet it head-on.

This Court's decisions in capital cases have displayed a sensitive awareness that "death is a different kind of punishment...." Gardner v. Florida, 430 U.S. 349, 357 (1977). And in capital cases "consideration must be given to the quality, as well as the quantity, of the information on which the sentencing [authority] may rely." Id., at 359. These cases require special measures armed at protecting the "interest in reliability" of the factfinding function. Id.

"The penalty of death is qualitatively different from a sentence of imprisonment, however long.... Because of that qualitative difference, there is a corresponding difference in the need for reliability in the determination that death is the appropriate punishment in a specific case." Woodson v. North Carolina, 428 U.S. 280, 305 (1976) (plurality opinion).

Long-term psychiatric predictions of violent behavior lack even a modicum of reliability. That such predictions are considered extremely unreliable is a nearly unanimous viewpoint.[8/] See, e.g., American Psychiatric Association Task Force Report (1974) ("It is the opinion of the Task Force

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[8/] In People v. Murtishaw, 29 Cal.3d 733, 175 Cal. Rptr. 738, 631 P.2d 446 (1981), the Supreme Court of California, referring to several recent studies of psychiatric predictions of future dangerousness, concluded that "empirical studies have transformed the earlier trend of opinion [that such predictions of dangerousness are extremely unreliable] into an impressive unanimity: The evidence, as well as the consensus of opinion by responsible scientific authorities, is now unequivocal." Id., 175 Cal. Rptr. at 759.

that such judgments [of dangerousness] are fundamentally of very low reliability...." Tr. p. 2075); Dix, Clinical Evaluation of the "Dangerousness" of "Normal" Criminal Defendants, 66 Va. L. Rev. 523, 532-544 (1980); Ennis & Litwack, Psychiatry and the Presumption of Expertise, 62 Calif. L. Rev. 693, 711-716 (1974); Morse, Crazy Behavior, Morals, and Science: An Analysis of Mental Health Law, 51 S. Cal. L. Rev. 527, 595 (1978) ("Reviewers agree that the ability to predict violence to others is extremely limited."); Steadman & Cocozza, Psychiatry, Dangerousness and the Repetitively Violent Offender, 69 J. Crim. L. & Criminology 226, 231 (1978) ("[D]ata strongly suggest that under pretrial examination conditions psychiatrists show no abilities to predict accurately future violent behavior beyond that expected by chance.") Commentator's conclusions about the success rates of predicting dangerousness have varied[9/] but have been "uniformly less than 50%." Dix, Expert Prediction Testimony in Capital Sentencing: Evidentiary and Constitutional Considerations, 19 Am. Crim. L. Rev. 1, 16 n.70 (1981).

A psychiatrist, clothed in the trappings of medical degrees and apparent esoteric insights into the human psyche, will, logically, be given great credence by a jury when he speaks of matters seemingly within his area of expertise. But when his own colleagues in the profession place the reliability of his predictions as only one or two steps above crystal ball gazing, then that credence is alarmingly misplaced. Such dangerously unreliable testimony also injects an impermissible degree of unreliability into the decision whether to impose death and, as such, is an affront to the Eighth and Fourteenth Amendments.

[9/] E.g., Morse, supra, 51 S. Cal. L. Rev. at 595 (predictions of violence are accurate about one-third of time, then only under ideal conditions; in most studies accuracy rate is lower; mean accuracy in available studies is approximately 19%); ACLU, The Rights of Metnal Patients 20 (Ennis & Emery eds. 1978) (concluding that "predictions of dangerous behavior are wrong about 95% of the time.")

CONCLUSION

Petitioner requests that his petition for a Writ of Certiorari be granted.

Respectfully submitted,

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ATTORNEY FOR PETITIONER.

March 19, 1983.

82-6425

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RONALD RAYMOND WOOMER,

PETITIONER,

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STATE OF SOUTH CAROLINA,

RESPONDENT.

MOTION FOR LEAVE TO PROCEED

IN FORMA PAUPERIS

Petitioner, Ronald Raymond Woomer, respectfully moves this Court for leave to proceed herein in forma pauperis, in accordance with the provisions of Title 28, United States Code, Section 1915, and Rule 46 of this Court. The affidavit of petitioner in support of this motion is attached hereto.

Presented herewith is a petition for writ of certiorari of the moving party.

Respectfully submitted,

David W. Carpenter

DAVID W. CARPENTER
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Columbia, SC 29201

Counsel for Petitioner.

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RESPONDENT.

AFFIDAVIT OF RONALD RAYMOND WOOMER
IN SUPPORT OF MOTION TO
PROCEED IN FORMA PAUPERIS

I, Ronald Raymond Woomer, being first duly sworn, depose and say that I am the petitioner in the above-entitled case; that in support of my motion to proceed without being required to prepay fees, costs or give security therefor, I state that because of my poverty I am unable to pay the costs of said proceeding or to give security therefor; that I believe I am entitled to redress.

I further swear that the responses which I have made to the questions and instructions below relating to my ability to pay the cost of prosecuting the appeal are true.

1. Are you presently employed? [illegible]

   a. If the answer is yes, state the amount of your salary or wages per month and give the name and address of your employer. _____

   b. If the answer is no, state the date of your last employment and the amount of the salary and wages per month which you received. 1978

   400 00 A MONTH

2. Have you received within the past twelve months any income from a business, profession or other form of self-employment, or in the form of rent payments, interest, dividends, or other source? ND

a. If the answer is yes, describe each source of income, and state the amount received from each during the past twelve months. _____

3. Do you own any cash or checking or savings account? ND

a. If the answer is yes, state the total value of the items owned. _____

4. Do you own any real estate, stocks, bonds, notes, automobiles, or other valuable property (excluding ordinary household furnishings and clothing)? ND

a. If the answer is yes, describe the property and state its approximate value. _____

5. List the persons who are dependent upon you for support and state your relationship to those persons. _____

I understand that a false statement or answer to any questions in this affidavit will subject me to penalties for perjury.

Ronald R Woomer
Ronald Raymond Woomer

SWORN TO and subscribed before me
this 18th day of MARCH, 1983.

Thomas Oles
Notary Public for South Carolina
My Commission Expires: 4/26/89.

The STATE, Respondent,

v.

Ronald Raymond WOOMER, Appellant.

No. 21829.

Supreme Court of South Carolina.

Dec. 20, 1982.

Following affirmance of defendant's convictions, 276 S.C. 228, 277 S.E.2d 696, appeal was taken from sentencing retrial in the General Sessions Court, Horry County, Ernest A. Finney, Jr., J., which resulted in death sentence. Defendant's direct appeal was consolidated with the Supreme Court's mandatory review. The Supreme Court, Gregory, J., held that: (1) defendant lacked standing to assert overbreadth of statutory definition of kidnapping; (2) trial court did not err in excusing for cause juror who indicated he would not under any circumstances vote to impose death penalty; (3) evidence of defendant's prior escape while in prison in West Virginia was proper reply to his presentation of evidence of his good conduct while in prison in South Carolina; (4) requirement that custodial interrogation conducted by court-appointed psychiatrist be preceded by same warnings *Miranda* requires police officer to give was complied with; (5) trial court exercised sound discretion in allowing State's psychiatrist to testify that defendant would likely repeat acts of violence; (6) trial court gave adequate curative instructions to jury following State's psychiatrist's testimony that defendant told another doctor that he would rather have the electric chair; (7) there was no reversible error in solicitor's closing argument informing jury of numerous procedural safeguards afforded capital defendant; (8) trial court's definition of reasonable doubt was well within applicable guidelines; (9) statute governing review of death sentence did not violate Eighth Amendment; and (10) death sentence was neither excessive nor disproportionate.

Affirmed.

1. Constitutional Law ⇐42.1(3)

Defendant lacked standing to assert overbreadth of statutory definition of kidnapping, where his conduct fell squarely within statutory definition.

2. Jury ⇐108

Trial court did not err in excusing for cause juror who indicated he would not under any circumstances vote to impose death penalty.

3. Criminal Law ⇐986.2(1)

Consideration of character and record of individual offender and circumstance of particular offense are constitutionally indispensable part of process of inflicting penalty of death.

4. Criminal Law ⇐986.2(4)

In capital case, evidence of defendant's prior escape while in prison in West Virginia was proper reply to his presentation of evidence of his good conduct while in prison in South Carolina.

5. Criminal Law ⇐412.2(3)

Custodial interrogation conducted by court-appointed psychiatrist raises same concerns as custodial interrogation conducted by police officer and therefore must be preceded by same warnings *Miranda* requires police officer to give.

6. Criminal Law ⇐412.2(3)

Testimony of doctor, social worker and forensic psychologist that they individually informed defendant of his constitutional rights and that anything he said could be used against him in court fully complied with requirement that custodial interrogation conducted by court-appointed psychiatrist be proceeded by same warnings *Miranda* requires police officer to give.

7. Criminal Law ⇐474

Trial court, in capital case, exercised sound discretion in allowing State's psychiatrist to testify that defendant would likely repeat acts of violence.

8. Constitutional Law ⇐70.1(10)

Capital punishment as such and method of execution are matters of legislative determination, and judicial resources, such as time of jurors, are not to be expended on matters not before trial court.

9. Criminal Law ⇐1169.5(2)

In capital case, trial court gave adequate curative instructions to jury following State's psychiatrist's testimony that defendant told another doctor that he would rather have the electric chair.

10. Criminal Law ⇐1154

Trial judge has wide discretion in dealing with range and propriety of solicitor's argument to jury, and ordinarily his rulings thereon will not be disturbed.

11. Criminal Law ⇐712

There was no reversible error in solicitor's closing argument informing jury of numerous procedural safeguards afforded capital defendant, despite contention that this lessened jury's sense of responsibility by emphasizing that its responsibility was shared by legal system.

12. Criminal Law ⇐789(13)

Trial court's definition of reasonable doubt as "substantial doubt, doubt for which you can give a reason" was well within applicable guidelines.

13. Criminal Law ⇐1213

Statute governing review of death sentence did not violate Eighth Amendment requirement that capital punishment be imposed fairly, and with reasonable consistency, or not at all. Code 1976, § 16-3-25(C)(3); U.S.C.A. Const.Amend. 8.

14. Homicide ⇐354

Death sentence was neither excessive nor disproportionate in light of defendant's character or his crimes of murder, assault and battery with intent to kill, criminal sexual conduct in the first degree and two counts of kidnapping. Code 1976, § 16-3-20(C).

15. Criminal Law ⇐355

Jury was entitled to consider testimony that defendant may have been acting under influence of drugs and/or alcohol, as well as evidence of the State to the contrary.

Deputy Appellate Defender David W. Carpenter, of S.C. Com'n of Appellate Defense, Columbia, for appellant.

Atty. Gen. Daniel R. McLeod and Sr. Asst. Atty. Gen. Brian P. Gibbes, Columbia, and Sol. James O. Dunn, Conway, for respondent.

GREGORY, Justice:

This appeal is from the sentencing retrial of appellant Ronald Raymond Woomer, who was sentenced to death by a jury. We consolidate his direct appeal with our mandatory review pursuant to S.C.Code Ann. § 16-3-25 (Cum.Supp.1981) and affirm his sentence.

We previously affirmed Woomer's convictions of (1) murder of Della Louise Sellers; (2) assault and battery with intent to kill on the person of Wanda Summers; (3) criminal sexual conduct in the first degree on the person of Wanda Summers; and (4) two counts of kidnapping of Wanda Summers and Della Louise Sellers, in *State v. Woomer*, 276 S.C. 258, 277 S.E.2d 696 (1981). We refer to that opinion for a recitation of the relevant facts and proceed to address appellant's exceptions.

[1] First, Woomer argues the use of the statutory aggravating circumstances of murder while in the commission of kidnapping violates the Eighth Amendment prohibition against arbitrary infliction of the death penalty because the statutory definition of kidnapping is vague and overbroad. This issue was decided adversely to appellant's position in *State v. Smith*, 275 S.C. 164, 165, 268 S.E.2d 276 (1980). Furthermore, as in *Smith*, Woomer's conduct falls squarely within the statutory definition, thus he lacks standing to assert overbreadth.

[2] Next, Woomer argues the trial court erred in excusing for cause juror James L. Faulk. Appellant concedes Faulk indicated he would not under any circumstances vote

to impose the death penalty; however, "hoping that this Court might reconsider its position" in recent decisions rejecting arguments upon which appellant relies, appellant raises this exception. Rule 8, Section 10 of the Rules of Practice of the Supreme Court requires one to petition the Court in writing at least four days before the call of the case for permission to argue against a decision of this Court. Appellant did not petition this Court for this purpose; however, we consider his argument a 4 adhere to our decisions in *State v. Adams*, 277 S.C. 115, 283 S.E.2d 582 (1981); *State v. Hyman*, 276 S.C. 559, 281 S.E.2d 209 (1981); and *State v. Linder*, 276 S.C. 304, 278 S.E.2d 335 (1981).

Thirdly, Woomer argues the trial court erred in admitting testimony of his commission on the same day of other crimes in Georgetown and Colleton Counties and testimony of his escape while in prison in West Virginia in 1973. Woomer contends admission of nonstatutory aggravating evidence runs a substantial risk that the jury will impose a death sentence as much based on nonstatutory aggravating factors as to statutory ones. We resolved the issue concerning evidence of other crimes Woomer committed on the same day in *State v. Woomer*, supra.

[3, 4] Testimony of Woomer's escape in West Virginia was offered in reply to appellant's testimony by three South Carolina prison officials regarding his good conduct while on death row in South Carolina. "[C]onsideration of the character and record of the individual offender and the circumstances of the particular offense [are] a constitutionally indispensable part of the process of inflicting the penalty of death." *Woodson v. North Carolina*, 428 U.S. 280, 304, 96 S.Ct. 2978, 2991, 49 L.Ed.2d 944 (1976). "[I]t is desirable for the jury to have as much information before it as possible when it makes the sentencing decision." *Gregg v. Georgia*, 428 U.S. 153, 204, 96 S.Ct. 2909, 2939, 49 L.Ed.2d 859 (1976). Both the accused and the State are entitled to a fair trial. We believe evidence of Woomer's prior escape was proper reply to his presentation of evidence of his good conduct while in prison in South Carolina.

[5] Next, Woomer argues the trial court erred in allowing Dr. Galvarino, the State's psychiatrist, to testify Woomer would likely repeat acts of violence. Woomer contends his Fifth Amendment right to remain silent and his Sixth Amendment right to consult with an attorney were violated. *Estelle v. Smith*, 451 U.S. 454, 101 S.Ct. 1866, 68 L.Ed.2d 359 (1981) recognizes "a custodial interrogation conducted by a court-appointed psychiatrist raise[s] ... the same concerns as a custodial interrogation conducted by a police officer and therefore must be preceded by the same warnings *Miranda* requires a police officer to give." *Battie v. Estelle*, 655 F.2d 692, 699 (5th Cir.1981).

[6] Woomer's attorney requested the psychiatric evaluation to determine Woomer's competency to stand trial and consented to the psychiatric examination to determine Woomer's criminal responsibility. Dr. Galvarino, Melvin Davis, a social worker employed by the South Carolina State Hospital, and T. V. Smith, a forensic psychologist employed there, testified they individually informed Woomer of his constitutional rights and that anything he said could be used against him in court. This fully complies with *Smith*, *supra*, and *Battie*, *supra*.

Woomer contends testimony concerning future dangerousness is not sufficiently scientifically reliable and admission thereof injected an arbitrary factor into the sentencing proceeding in violation of section 16-3-25(C)(1) of the Code. This Court is not required to vouch for reliability of the data or embrace any social science methodology to answer this objection.

The State witness, Dr. Galvarino, was qualified as an expert and proceeded to depict the appellant's personality and to project his likely future behavior. In arguments outside the jury's presence, counsel generally characterized testimony by this witness as "nonsense" and "jibberish" while offering to the trial court a task force report of the American Psychiatric Association which criticized predictive endeavors

The testimony was admitted, and counsel for appellant proceeded to closely cross-examine the witness, confronting him with the report. Appellant later offered the testimony of Professor Paternoster of the University of South Carolina which was also highly critical of predictive psychiatry.

[7] In short, the appellant's objection was addressed to the weight of the evidence and not to its admissibility. We are persuaded that the appellant effectively challenged the evidence of the State and was in no way prejudiced by its admission. The trial court exercised sound discretion in ruling on this matter.

[8] We cannot speak as favorably about the remainder of Professor Paternoster's testimony. Appellant's primary purpose in offering his expertise was to convince the jury that capital punishment in general is not an effective deterrent. The State objected to the testimony on the ground that capital punishment as a public policy was established by the legislature and as such is not a proper matter to be placed before the jury. The objection should have been sustained. Since the date of this trial, we have several times advised the bench and bar that capital punishment as such and the method of execution are matters of legislative determination and judicial resources, such as the time of jurors, are not to be expended on matters not before the trial court. *State v. Thompson*, S.C., 292 S.E.2d 581 (1982); *State v. Plath*, 277 S.C. 126, 284 S.E.2d 221 (1981); *State v. Gilbert*, 277 S.C. 53, 283 S.E.2d 179 (1981). We assume these admonitions will be followed in the future.

Woomer further argues the trial court erred in refusing to declare a mistrial after Dr. Galvarino testified appellant told another doctor that he would rather have the electric chair. He contends this impermissibly introduced an arbitrary factor into the sentencing proceeding. We disagree.

[9] The trial court gave adequate curative instructions to the jury. Moreover, the jury was fully aware of Woomer's desire to live. In his participation in the *voir dire* and closing argument, Woomer stressed his desire to live. This argument is without merit.

Next, Woomer argues the solicitor's closing argument informing the jury of the numerous procedural safeguards afforded a capital defendant lessened the jury's sense of responsibility by emphasizing that its responsibility was shared by the legal system, thus the likelihood of a mistaken death sentence was decreased. The State argues this was intended to stress upon the jury the extreme importance of their decision, and it heightened rather than diminished their sense of responsibility.

[10, 11] The trial judge has wide discretion in dealing with the range and propriety of the solicitor's argument to the jury, and ordinarily his rulings thereon will not be disturbed. *State v. Durden*, 264 S.C. 86, 212 S.E.2d 587 (1975). This exception is without merit.

[12] Woomer argues the trial court erred in defining reasonable doubt as "substantial doubt, doubt for which you can give a reason." This definition is well within the guidelines set forth in *State v. Butler*, S.C., 290 S.E.2d 1 (1982) and *State v. Griffin*, S.C., 285 S.E.2d 631 (1981).

[13] Lastly, Woomer argues this Court's construction of section 16-3-25(C)(3) of the Code violates the Eighth Amendment requirement that capital punishment be imposed fairly, and with reasonable consistency, or not at all because it does not mandate comparative review of the death sentence on appeal with other factually "similar" cases, regardless of the penalty imposed. This issue was addressed in *State v. Copeland*, — S.E.2d —, Smith's Advance Sheets, Opinion No. 21808, filed November 10, 1982. We adhere to that decision.

[14] In finding, as we do, that this case bears a strong resemblance to *State v. Shaw*, 273 S.C. 194, 255 S.E.2d 799, cert. denied, 444 U.S. 967, 100 S.Ct. 457, 62 L.Ed.2d 329 and *Roach v. South Carolina*, 444 U.S. 1026, 100 S.Ct. 690, 62 L.Ed.2d 660, we have no difficulty in concluding that the sentence of death is neither excessive nor

disproportionate in light of appellant's crime and his character. In *Shaw, supra*, the codefendants robbed, kidnapped, raped and murdered in circumstances that starkly revealed the thoroughly malignant spirit in which those awesome acts were committed. The trial court in *Shaw, supra*, found insufficient the mitigating evidence of stunted intellect and voluntary inebriation. In the instant case, it is apparent that the jury was likewise unimpressed by appellant's showing in mitigation.

Two factual differences arise in comparing this case with *State v. Shaw, supra*. For one thing, appellant's accomplice committed suicide at the time of arrest. Secondly, one of the intended victims survived and was able to narrate the events at issue. Through her account and the testimony of eye-witnesses to the robbery, a chilling picture of ruthless criminality emerges. Appellant and his accomplice entered a small convenience store and, brandishing a shotgun and pistol, forced the owners into a corner. As unsuspecting customers entered the store, they and their small children were pushed and shoved, cursed, bullied and herded into the same rear area. After collecting all the available money, the robbers forced two women into their automobile and departed, offering vulgar threats to those left behind.

The victims were driven to a nearby woods where they were raped. The surviving victim was the object of appellant's brutal gratification which included perverted acts and demands that the victim utter obscenities in the process. After the rape episodes, appellant directed the two women to walk in front of him down a darkened road. He then fired the shotgun at them, wounding both. In the blast, the surviving victim suffered the loss of her entire lower jaw. Not surprisingly, this horrendous wound led appellant to conclude she was dead. The other victim was slightly wounded and had to be dispatched with a single pistol shot to the head as she lay on the ground screaming. The pistol in question was shown to have been stolen from the home of appellant's grandmother. She and her second husband were robbed at gunpoint by appellant's accomplice and another person who could not be identified because the elderly couple had been promptly locked in a closet.

[15] In cross-examination of State witnesses, appellant sought to suggest to the jury that he may have been acting under the influence of drugs and/or alcohol. Clearly the jury was entitled to consider this testimony as well as the evidence of the State to the contrary. As noted above, the same excuse was offered in *State v. Shaw, supra*. We would add that the evidentiary showing in the latter case was far more substantial than the showing made here.

In mitigation, appellant offered the testimony of his mother. She related that appellant's father had had a drinking problem and a disinclination to hold steady employment. She characterized her former husband as an insensitive man who exhibited little interest in his children. He enjoyed hunting but did not include the appellant except when appellant asked to go along. She expressed the view that her former husband was a harsh disciplinarian, sometimes using a belt on their sons and often sending them to their room. The nature of the misbehavior provoking these sanctions was not disclosed. Appellant's mother recalled with some vividness a particular incident when appellant was thirteen and had failed to feed the hunting dogs. He was sent to his room.

Appellant's mother and another witness, a girlfriend, both stated that they found the behavior proven at trial to be uncharacteristic of him. In the same vein, three officials of the South Carolina Correctional Institution testified that during appellant's close and safe confinement there he had not misbehaved.

The jury was fully instructed on all the mitigating circumstances available under section 16-3-20(C) of the Code. In addition they were given the benefit of an unsworn statement by the appellant in which he professed to have achieved peace of mind through religion and desired to be of future help to others. All things considered, we

conclude that the jury made a correct determination in this case and that the sentence of death is neither excessive nor disproportionate in light of this crime and this defendant. Further, given that we have upheld a comparable sentence in the comparable case of *State v. Shaw*, *supra*, we are confident that the finding of this jury is by no means an aberration.

We have examined the entire record for prejudicial error and find none. Therefore, we affirm the sentence of death of Ronald Raymond Woomer.

AFFIRMED.

LEWIS, C.J., LITTLEJOHN and NESS, JJ., and JOSEPH R. MOSS, Acting Associate Justice, concur.

Albert D. McALISTER, Respondent,

v.

Suzette N. PATTERSON, Appellant.

No. 21831.

Supreme Court of South Carolina.

Dec. 21, 1982.

Mother appealed from orders of the Family Court, Laurens County, Walter T. Lake, J., restraining her from removing her minor child from county, or in the event she moved, granting custody of child to father. The Supreme Court, Gregory, J., held that evidence amply supported finding of trial judge that best interest and welfare of minor child would best be served by his remaining in county with his father, friends and other relatives.

Affirmed.

1. Infants ⇐19.2(2)

In matters of child custody, primary or paramount consideration is welfare of child.

2. Infants ⇐19.3(3)

In child custody cases, presumption is against removal of child from jurisdiction of state.

3. Infants ⇐19.3(2)

In child custody case, while the Supreme Court is free to find facts based on its view of the preponderance of evidence, trial judge, who observes witnesses and is in better position to judge their demeanor and veracity, is given broad discretion.

4. Divorce ⇐300

In child custody proceeding, evidence amply supported trial judge's finding that best interest and welfare of minor child would best be served by his remaining in county with his father, friends and other relatives rather than having mother remove child out of jurisdiction of state.

L. Paul Barnes, of Ward, Howell, Barnes, Long, Hudgens & Adams, and Bobby M. Pruitt, of Boyd, Rice & Pruitt, Spartanburg, for appellant.

Richard T. Townsend, of Townsend & Thompson, Laurens, J. Kendall Few, Greenville, and Randall T. Bell, of McNair, Glenn, Kondursa, Corley, Singletary, Porter & Dibble, Columbia, for respondent.

GREGORY, Justice:

Suzette N. Patterson appeals from a family court order restraining her from removing her minor child from Laurens County, or in the event she moves, granting custody of the child to his father, respondent Albert D. McAlister. We affirm.

Appellant and respondent were divorced on August 7, 1980, after one year's separation. Pursuant to a Property Settlement Agreement between the parties dated August 6, 1979, custody of their minor son was vested in appellant.

Appellant married her present husband September 9, 1980. Approximately one year after her remarriage, appellant and

APPENDIX B

The Supreme Court of South Carolina

FRANCES H. SMITH
CLERK

P. O. BOX 11330
COLUMBIA, S. C. 29211

January 18, 1983

David W. Carpenter, Esquire
S. C. Commission of Appellate Defense
1401 Calhoun Street
Columbia, South Carolina 29201

Re: The State v. Ronald Raymond Woomer

Dear Mr. Carpenter:

The Court has this day refused your Petition for Rehearing in the above case in the following order:

"Petition Denied.

s/ J. Woodrow Lewis C.J.

s/ Bruce Littlejohn A.J.

s/ J. B. Ness A.J.

s/ George T. Gregory, Jr. A.J.

January 18, 1983."

The remittitur is being sent down today.

Sincerely yours,

Frances H. Smith
CLERK

FHS/cm

cc: The Honorable Brian P. Gibbes

APPENDIX C

The Supreme Court of South Carolina

FRANCES H SMITH
CLERK

P.O. BOX 11330
COLUMBIA, S.C. 29211

February 9, 1983

David W. Carpenter, Esquire
S. C. Commission of Appellate Defense
1401 Calhoun Street
Columbia, South Carolina 29201

Re: The State v. Ronald Raymond Woomer

Dear Mr. Carpenter:

The Court has this day granted your Petition for Stay of Execution in the above case in the following order:

> "Petition for Stay of Execution is granted for a period of sixty (60) days pending the filing of a Petition for Writ of Certiorari in the United States Supreme Court.
>
> s/ J. Woodrow Lewis C.J.
> FOR THE COURT
>
> February 9, 1983."

Sincerely yours,

Rebecca D. Timms
DEPUTY CLERK

RMD/cm

cc: The Honorable Brian P. Gibbes

COPY 3

COPY-04

APPENDIX D

STATE OF SOUTH CAROLINA)
) IN THE COURT OF GENERAL SESSIONS
COUNTY OF HORRY)

THE STATE OF SOUTH CAROLINA,)
PLAINTIFF.)
)
vs.) O R D E R
)
RONALD R. WOOMER,)
DEFENDANT.)

This matter comes before me on motion of Cleveland Stevens, Attorney for the Defendant, for an Order committing the Defendant, Ronald R. Woomer, Charged with the crime of Murder, Rape, Assualt & Battery, & kidnap, to the South Carolina State Hospital for an examination, observation and report to this Court; said motion being in accordance with the provisions of Section 44-23-410, Code of Laws of South Carolina, 1976, as amended.

Having considered the showing made in respect to the motion, this court is of the opinion that the Defendant should be committed to the South Carolina State Hospital for examination and observation. NOW, THEREFORE,

IT IS ORDERED that the Defendant be committed to the custody of the South Carolina Department of Mental Health for examination and observation by said Department regarding the Defendant's mental condition and his capacity to understand the proceedings against him and to assist in his own defense.

IT IS FURTHER ORDERED that subject to the provisions of Section 44-23-410 of the 1976 Code, the defendant may be retained in the custody of the Department of Mental Health for such period of time as is necessary to complete the examination.

IT IS FURTHER ORDERED that if the Department of Mental Health concludes that the Defendant is in need of hospitalization, then the Defendant shall be retained by said Department until such time as the hearing required and provided by Section 44-23-410 may be conducted by the Court.

JUDGE

Conway, South Carolina

Dated: 27 February 1979

I SO MOVE:

Cleveland Stevens

Attorney for Defendant

I CONSENT

Solicitor, 15th Judicial Circuit

APPENDIX E

STATE OF SOUTH CAROLINA)
) IN THE COURT OF GENERAL SESSIONS
COUNTY OF HORRY)

S.C. Vol. 790-0384

STATE,

VS.

RONALD R. WOOMER,
DEFENDANT.

ORDER

This matter comes before me on Motion of Jim Dunn, Solicitor for the Fifteenth Judicial Circuit, and with the consent of Evans M. Bunch, Counsel for the above named Defendant, Ronald R. Woomer, (said Defendant being charged with murder under aggravating circumstances, kidnapping, criminal sexual conduct, and assault and battery with the intent to kill in Horry County) for an Order committing the Defendant, Ronald R. Woomer, to the South Carolina State Hospital for an examination to determine whether or not Ronald R. Woomer knew the difference between legal right and/or legal wrong and moral right and/or moral wrong on February 22, 1979, when the above designated offenses are alleged to have taken place; that is to say, an examination under the McNaughton Rule.

Having considered the showing made in response to the Motion and with the consent of Evans M. Bunch, Counsel for the Defendant, Ronald R. Woomer, this Court is of the opinion that the Defendant should be committed to the South Carolina State Hospital for the purpose of being examined as set forth above. Now, therefore, it is

ORDERED that the previous Order of this Court providing, among other things, that the Defendant, Ronald R. Woomer, remain lodged in the Horry County Jail for a period of one (1) week be, and the same hereby is, superceded. And it is further

ORDERED that Ronald R. Woomer be transported immediately to the South Carolina State Hospital and that he be then and there examined under what is commonly referred to as the McNaughton Rule (i.e. whether or not Ronald R. Woomer knew the difference between legal right and/or legal wrong and moral right and/or moral wrong on February 22, 1979, when the above designated offenses are alleged to have taken place) and that immediately upon the conclusion of said examination

and Cleveland Stevens, Public Defender, whose address is: 1114 Third Avenue, Conway, South Carolina, 29526; and to Jim Dunn, Solicitor for the Fifteenth Judicial Circuit. It is further

ORDERED that the Defendant, Ronald R. Woomer be retained in the custody of the South Carolina State Hospital and/or the Central Corrections Institute until further Order of this Court. Nothing contained herein shall be construed as limiting in any way the Defendant or his Counsel to move before this Court for an Order making the Defendant, Ronald R. Woomer, available to such psychiatrists, psychologists, or other related personnel for the purpose of an independent examination at such time as the South Carolina State Hospital has concluded its examination as Ordered above.

IT IS SO ORDERED.

SIDNEY T. FLOYD, RESIDENT JUDGE
FIFTEENTH JUDICIAL CIRCUIT

I SO MOVE.

JIM DUNN, SOLICITOR
FIFTEENTH JUDICIAL CIRCUIT

I CONSENT.

EVANS M. BUNCH, COUNSEL FOR DEFENDANT

Dated at Conway, South Carolina
this 28 day of March, 1979

THIS IS PRIVILEGED INFORMATION FROM THE PATIENT'S MEDICAL RECORD AND SHALL BE KEPT CONFIDENTIAL AND SHALL NOT BE DISCLOSED BY ANY PERSON EXCEPT UNDER THE CONDITIONS OUTLINED UNDER SECTION [illegible] S. C. [illegible]

A&D
MAR 29 1979
SCSH

APPENDIX F

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Horry County

Honorable Ernest A. Finney, Jr., Judge

THE STATE,

RESPONDENT,

vs.

RONALD RAYMOND WOOMER,

APPELLANT.

PETITION FOR REHEARING

The petitioner, Ronald Raymond Woomer, requests rehearing of his appeal which was decided by Opinion Number 21829 issued December 20, 1982, affirming his sentence to death. Petitioner submits that in issuing this opinion:

1. The Court has incorrectly characterized petitioner's attack on Dr. Galvarino's predictions that, in his opinion, petitioner would not adapt to society and would commit acts of violence in the future as "addressed to the weight of the evidence and not to its admissibility." Petitioner's position at trial and on appeal has been that such evidence is inadmissible not only due to its unreliabilty and lack of probative value but also due to its

(Certificate of Service on page 3)

injecting of an arbitrary factor into the capital sentencing proceeding in violation of S.C. Code Ann. §16-3-25 (C)(1) and the Eighth Amendment.

2. Moreover, in State v. Koon, Opinion Number 21828, issued the same day as the opinion in petitioner's appeal, this Court held that psychiatric testimony which had been offered by Koon to show his probable future nonviolence and adaptability to prison "was properly excluded as irrelevant" since in a capital case "[t]he jury is concerned with the circumstances of the crime and the characteristics of the individual defendant as they bear logical relevance to the crime [,]" but not with future adaptability or behavior. Since such predictive evidence is, as this Court holds in Koon, legally irrelevant to a capital sentencing proceeding, then this Court has failed to note that petitioner's sentence of death rests on extremely prejudicial evidence having no relevance or probative value and thus fatally flawing the sentence of death in violation of the Fifth, Eighth, and Fourteenth Amendments and S.C. Code Ann. §16-3-25 (C)(1).

WHEREFORE, petitioner requests that a rehearing of his appeal be granted. He will submit additional briefs if this Court deems necessary.

Respectfully submitted,

David W. Carpenter

DAVID W. CARPENTER
Attorney for Petitioner

December 30, 1982.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of Petition for Rehearing has been served upon opposing counsel by mailing 1 copies in an envelope properly addressed with postage prepaid this 30 day of December, 1982

David W. Carpenter

ATTORNEY FOR Appellant

SWORN to before me this 30 day of December, 1982

(L.S.)

Notary Public for South Carolina

My Commission Expires: